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The Guamanian

MAGAZINE

ISSUE 9 JULY-AUGUST 2017 \$5.00

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Foreign Labor Crisis Looms

Visa approval standstill could have broad economic implications.

WORDS BY WAYNE CHARGUALAF

PHOTOS BY VICTOR CONSAGA



The Department of Labor's Alien labor processing and certification division monitors H2B Visa compliance at Guam construction worksites.

THERE IS A QUICKLY GROWING CRISIS on Guam—the shortage of H-2B foreign workers. The average person could be forgiven for dismissing it as an issue that's only of concern for certain groups, such as contractors, and perhaps lawyers and government officials who earn their paychecks wrestling with obscure points of labor law and federal regulation. But if ongoing efforts to resolve this crisis are not successful, the ripple effects threaten to touch almost every facet of life for the island's citizens.

Greg Massey, the head of the Guam Department of Labor's Alien Labor Processing and Certification Division, which monitors program compliance, said the community will feel the impact in a variety of ways. "When [the Simon Sanchez project] takes longer than expected, when it takes two years or three years...when they see the local infrastructure's not getting done...

when you see the home prices and rental prices going up...when GMH can't build another wing...you'll see the increased costs are coming. That's when everybody's finally going to realize it," he warned.

According to the U.S. Citizenship and Immigration Services (USCIS) website (www.uscis.gov), the H-2B visa program "...allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary nonagricultural jobs."

It further states: "To qualify for H-2B nonimmigrant classification, the petitioner must establish that:

There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.

Employing H-2B workers will not adversely affect the wages and working conditions of similarly



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*—Greg Massey,
head of the Guam
Department of Labor's
Alien Labor Processing
and Certification
Division Massey.*

employed U.S. workers.

Its need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as temporary."

It is the requirement that these jobs be temporary—and how that requirement relates to the unique conditions of Guam's labor market—that is the sticking point that resulted in this crisis. Or at least that is what the federal government is claiming. For a crisis whose effects promise to be significant, the cause remains shrouded in uncertainty.

H-2B workers have been a constant presence on Guam since the 1940s, and beginning with the construction boom of the 1980s, approval rates for H-2B visas have typically been around 95 percent. That changed, however, in late 2015. In December of that year there was a sudden and drastic decline in approval rates. Extensions for H-2B workers already on Guam were denied as well.

This sudden change occurred with little to no communication from USCIS. Local attorneys and government officials conducted their own research and found no changes in regulation or policy. Multiple inquiries were sent to the USCIS as to why so many visas were being denied. In response, Governor Eddie Calvo received a letter from USCIS Director Leon Rodriguez, which stated, "Although there have been no recent policy changes, USCIS has heard concerns from several stakeholders, including employers on Guam this year, about

a perceived increase in denials and requests for evidence for H-2B petitions."

The letter went on to say that certain employers on Guam "have expressed a need for H-2B workers spanning over a period of several years, which has cast doubt on whether these employers' needs can be properly characterized as 'temporary,' within the regulatory definition of that term." The USCIS essentially claimed that the consistent use of H-2B workers on Guam throughout the years by the same firms suggests abuse of the program. After all, how can a firm say they have temporary need for foreign workers when it has regularly requested such workers for decades?" Rodriguez wrote.

According to Massey, each project is temporary as long as it lasts no longer than three years. Although there is a dearth of local construction workers, even if current outreach attempts to recruit and train more local workers were successful, there would still be a need for H-2B workers. "For the buildup, we need seven, eight thousand workers. If we train five hundred people a year, that's pie in the sky. The last time I looked at GCC's reports, there's like, 10 guys in the construction trades. We need around 10 thousand. Even without the buildup, we typically have an H2 population of about a thousand to 15 hundred workers," Massey said.

He continued, "I've been here since 1990. I've not seen the federal government complain

there's any systemic abuse of the H2 program. You'll have your occasional bad actors, and individually you target those bad actors. But system-wise, I've never heard a peep out of the federal government saying that there's anything wrong with the temporary nature of these jobs."

Governor Calvo and Congresswoman Madeleine Bordallo met with federal officials on several occasions, all with no result. Finally, on April 6, 2017, the Governor's office issued a press release stating that, due to the shortage of H-2B workers, he could no longer support the military buildup.

According to the press release: "What used to be more than 1,000 foreign laborers is reduced to 178 foreign laborers—this is woefully inadequate to fill the need for nearly 4,000 laborers to help construct facilities for the Department of Defense shifting military forces from Okinawa to Japan. It's insufficient even for the organic growth Guam is experiencing outside of the fence—and the buildup adds to the need."

Massey said part of the difficulty in discussing this issue stems from certain persistent, but misguided assumptions that need to be cleared up. One example is the notion that firms cut labor costs by paying temporary foreign workers less than they would a local hire, resulting in both the exploitation of a vulnerable class of workers and an increase in local unemployment.

"It's not just our government projects that are going to be impacted, but also the private sector."

— Albert Santos, architecture and engineering manager at GHURA.



"That's a common misconception, that these guys are cheap foreign labor that are being abused," he pointed out. "I've never had someone sit in the chair across from me and say they'd prefer H-2B to local hires." He added that there are a lot of expenses and work involved in getting H-2B workers approved. The regulation has to be followed closely in order to avoid penalties. As a result, there are attorney fees for each application. The applicant needs to document and verify that they attempted to hire locally, and there were not enough local individuals in the necessary skill they are hiring for. There are also significant logistical considerations. Applicants must pay the workers' airfare, provide lodging, and a cook. Also, the Alien Labor Processing and Certification Division closely monitors contractors and worksites that utilize H-2B workers.

"Our program basically has been called the gold standard for the entire United States, partially because our jurisdiction is so small," said Massey. "If you say, 'I'm going to build an apartment building in L.A.,' nobody checks. Here, you say you're going to build an apartment building in Tamuning, we go check. We drive down and look at it. Even after they get here, within 24 hours of arrival, they have to register with us, we give them an I.D. card and we track them. We'll go out, we have a list, we know all the projects. And even

the projects that aren't supposed to have H2s, we'll check those too," Massey said.

Additionally, an H-2B worker can only stay on Guam for a maximum of three years. After those three years are up, the employer has to hire new workers and go through the entire approval process again. Massey said most firms would rather hire local than go through that trouble, but the problem is there aren't enough local workers trained and qualified in certain key skills. And what are those skills? "Masonry, iron working, and carpentry," Massey said. "There just aren't enough locals entering those fields. They pay well. It's just people aren't interested in doing those jobs."

When the H-2B shortage is discussed, the primary focus is typically the way it affects the military buildup. However, the shortage affects many other sectors as well. An example of this impact is being felt at the Guam Housing and Urban Renewal Authority (GHURA). GHURA is typically thought of as a provider of low-income housing. Although that is a primary concern, the agency is actually responsible for a broad range of projects. In recent years these have included Head Start classrooms, senior centers, the Dededo pool, the Dededo skatepark, police and fire stations for Dededo, Agat, and Inarajan, and the Sinajana Gym. "Now people are saying they want a gym like that," laughed Albert Santos, architecture and engineering

manager at GHURA.

"Like any agency, GHURA is performance-driven," said Santos. "Annually, we're expected to meet our drawdown ratio. Annually we get our grants, and we're expected to expend it or obligate it in a given timeframe. This might be the first year we're close to not meeting that drawdown, and a lot of it has to do with availability of skilled workers.

"One project that saw major setbacks is the upgrade of the Astumbo Gym; we're going to be using it as a Tier 2 Shelter. That company has been awesome as far as completing our other projects. They lost 22 of their local workers. What we're seeing is the bigger companies are hurting because they have the bigger military projects. So they've been out recruiting—and this includes some of the bigger projects in the private sector as well—so we're seeing the pool of available local skilled workers getting pulled [into those projects]. We're also doing the police precinct, and I'm very concerned about that one. A big indicator with that project is when the bid came out. It came in way over our estimate. What's happening is the local firms are changing their strategy. With the reduction of H-2B workers, they're joining together, and that drives up costs. What's also disturbing is the smaller renovations for our housing are also taking longer because those contractors are also losing their staff. So these guys have to go

out and recruit, only when they recruit, they're getting guys who are less skilled, so they spend more time monitoring them. And that also has an impact," Santos explained.

The real estate market is already feeling the effects of the H-2B worker shortage. According to Siska Hutapea, president of local real estate appraisal firm Cornerstone Valuation, in the past year the anticipated rise in costs has caused many in the market—both commercial and residential—to look toward renovation as a more cost-effective alternative to new construction. "From the five-story former Ben Franklin building on Marine Corps Drive to older single family dwellings, these properties that have been vacant for many years started to look attractive," Hutapea said.

She also noted, "The shortage will limit additional supply in the market and will push prices upward on existing inventories. If the shortage prolongs, it will negatively impact the land prices as development will be scarce." So not only will the prices of existing houses rise, but the price of land will drop because no one will want to build new construction because it's too expensive. A more pressing matter for the average citizen, however, are the effects on affordable housing.

Said Hutapea, "We have seen landlords upgrading their properties to higher, subsidized rent tenants. This will leave a void in the affordable market sector." In other words, in order to cope with rising costs, landlords are upgrading their units to attract tenants who have a housing allowance, namely federal employees and the military. Costs are such that providing rental units for people who lack a housing allowance and earn below average incomes doesn't provide a sufficient profit margin.

"Overall, I would expect an impact on availability of affordable units," agreed Santos. "It's not just our government projects that are going to be impacted, but also the private sector.

It's hard for you as an individual to get a contractor to do renovations on your house now. Or better yet, add an extension. That's going to have a profound impact on our real estate market. The top end, we have

an overstock on that. Just look at the tower next to GMH. The majority of us locally can't afford that. The homes that are going up in the private sector, even the ones [in the middle class] will struggle in the future to buy anything affordable. I would suggest people keep what they have because they won't be able to afford anything other than that. And even up keeping it will be an issue as well."

Finally, although the majority of H-2B workers on Guam have historically been in the construction field, others can also be found in many other important areas. These include skilled workers in the Ship Repair Facility, ornamental landscapers, and in the medical field, such as nurses.

Various attempts at remedying the H-2B worker shortage have been attempted. Congresswoman Bordallo requested an amendment to the 2017 National Defense Authorization Act (NDAA) that would allow Guam greater flexibility in approving H-2B workers since they are necessary for the military buildup. Although it was approved in the House of Representatives, Congress eventually dropped this amendment from the final version. It has been speculated that because immigration had recently become a volatile issue, Bordallo's H-2B amendment was reminiscent enough of immigration reform that it was excluded in order to avoid controversy. A similar amendment is expected to be proposed as part of the 2018 NDAA.

Along with the efforts of Governor Calvo and Congresswoman Bordallo, the Guam Contractor's Association has launched a lawsuit asking the federal courts to intervene and stop further H-2B denials. The USCIS has moved to dismiss, and the case remains in limbo.

Albert Santos of GHURA, who also serves as a member of the Governor's task force to remedy the H-2B crisis, has been exploring alternative building systems that are less labor intensive (and therefore less costly). "Some of the Asian systems show promise," said Santos, "but of course they need to meet our requirements as far as wind load and our seismic zone [are concerned]."

One widely supported means of meeting

Guam's construction needs is development of the local workforce. Even if Guam never eliminates the need for foreign workers, people such as Greg Massey and Albert Santos believe that if Guam develops its local workforce to the point that it significantly reduces dependence on them, it will ultimately be to the island's benefit.

"Most people think of this as a foreign worker crisis, but it's really a jobs crisis," said Massey. "There needs to be a shift in the way we think about these jobs. In a way they've been looked down on for years. Teachers would say things like, 'If you don't do good in school, you'll end up a construction worker.' It creates this stigma. But construction is important. You need a lot of knowledge to be a skilled construction worker. Can you build a good doorframe? That takes math."

Massey continued, "Construction is a young man's game. So the people we need to reach are the people in middle school right now. We need to get the word out there that you can make a good living working in construction." He also explained that there are several opportunities to enter the construction field through programs provided by the Department of Labor's American Job Center. "Let them know, 'I want to be in construction.' If you tell one of our caseworkers that, they'll get you to the Trades Academy, or into an apprentice program or to an employer who can get you into a starter job. We need people who are willing to do these jobs to come in and get developed. People who like to work outside and work with their hands. There are so many jobs, and they pay well. These are not minimum wage jobs. Your typical carpenter makes a minimum of \$14.00 an hour, masons make about the same. Rebar guys make a little less but it's a lot more than \$8.25," Massey said.

Santos agreed. "Maybe this will be an eye-opener," he said. "It would be good to see more local people get into construction. If some of those people started their own construction businesses, that would be awesome. Because these jobs pay well, and I know there's a lot of local talent." 🍷